

acre Site as a battery recycling facility. The Site is located at 5715 Angola Road, Toledo, Lucas County, Ohio, in a mixed residential/industrial area. While in operation, the Lead-Battery Recycler Site received batteries from numerous locations and companies for recycling. The facility has been closed since 1983.

On September 14, 1994, L. Keith Brunner, general partner of Detroit Lead Recyclers, sent a letter to the U.S. EPA and the Ohio Environmental Protection Agency (OEPA) noting that a release of a reportable quantity of lead may have occurred at the Lead Battery Recycler Site.

The Respondents are alleged generators of spent batteries that were shipped to the Lead Battery Recycler Site. Each Respondent's share of the waste delivered to the Site is believed not to exceed nine-tenths of one percent (.9%) of the total waste delivered to the Site.

A 30-day period, beginning on the date of publication, is open pursuant to Section 122(i) of CERCLA for comments on the proposed settlement.

David A. Ulrich,

Acting Regional Administrator-Region V, U.S. Environmental Protection Agency.

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BILLING CODE 5560-50-M

[OPPTS-211038; FRL-4901-9]

## Response to TSCA Section 21 Petition to Amend the Definition of Generator

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Denial of TSCA Section 21 Petition.

**SUMMARY:** This notice responds to a citizen's petition submitted by Environmental Protection Services, Inc. under section 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2620) to initiate a rulemaking to amend the definition of "generator" under 40 CFR 761.3 to include persons who ship more than five transformers to rebuilding/decommissioning facilities for repair, unless they certify that the transformers are shipped for repair and are not PCB waste. EPA is denying this petition because amending the definition of generator at § 761.3 is unnecessary and would not result in greater protection to health or the environment, because the existing regulations provide equivalent and adequate protection against unreasonable risk.

**ADDRESSES:** Copies of the petition and all related information used by the Agency to develop this response are

located in the TSCA Nonconfidential Information Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. B-607, Northeast Mall, 401 M St., SW., Washington, DC, 20460. They are available for review and copying from 12 noon to 4 p.m., Monday through Friday, except for legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** In this notice, EPA is responding to the petition of Environmental Protection Services, Inc. under section 21 of TSCA regarding amending the definition of "generator" under 40 CFR 761.3.

### I. Background

#### A. TSCA Section 21

Section 21 of TSCA provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance, amendment, or repeal of, among other things, rules imposing substantive controls on chemical substances or mixtures under section 6 of TSCA. Section 21(b)(3) requires that EPA grant or deny a petition within 90 days of its filing. If EPA grants a section 21 petition, EPA must promptly commence an appropriate proceeding. If EPA denies the petition, the reasons for denial must be published in the Federal Register.

If EPA denies a petition within 90 days of the filing date, or fails to grant or deny within the 90-day period, the petitioner may commence a civil action in a Federal district court to compel EPA to initiate the requested action. This suit must be filed within 60 days of the denial, or within 60 days of the expiration of the 90-day period if EPA fails to grant or deny the petition within that period.

#### B. Summary of Petition

On May 27, 1994, Environmental Protection Services, Inc. (herein referred to as "petitioner") petitioned EPA under section 21 of TSCA, for the amendment of EPA's PCB regulations to address the need to manifest PCB-Contaminated Transformers that are shipped to rebuilding/decommissioning facilities for repair but are actually unsuitable for repair and are therefore PCB waste. The petitioner is currently in the business of reclaiming valuable metals from PCB-Contaminated Transformers that have been taken out of service based on a

determination that the transformer is unsuitable for repair. It is the petitioner's position that many shippers know in advance that their transformers cannot be repaired but are claiming ignorance of this fact to avoid the provisions of the PCB regulations at 40 CFR part 761, subparts D and K. [Note: The petitioner also mentions subpart H; however, there is no subpart H in the PCB regulations]. In order to remedy this situation the petitioner requests that EPA revise the definition of "generator" at 40 CFR 761.3 to read as follows:

"Any person who, in a single shipment, causes to be transported greater than five (5) distribution class oil filled equipment (pole mounts, pad mounts, switch gear, etc.) to a facility which has the capability to decommission, which includes but not limited to scrap metal production, as well as a rebuilding and reconditioning capability shall be considered a "generator" unless it provides a certification that none of the transformers have been subject to the disposal, recordkeeping and manifest requirements of subparts D, H, and K of this part.

The petitioner states that in average shipments of 75 to 150 pole-mounted transformers shipped to service facilities, between 0% to 35% are actually repairable. Furthermore, the petitioner states, "By permitting such shipments without manifesting the transformers' owners are essentially under no control with respect to on-site storage for disposal practices." As such, the petitioner strongly believes that, based upon their own experience, large shipments of transformers will contain units that are clearly unsuitable for rebuilding or remanufacture and that the corresponding dangers during transport of such large shipments of unmanifested PCBs present an unreasonable risk of injury to health and the environment.

In support of their petition, the petitioner provided data which is representative of the criteria (e.g., age of the unit, non-standard size, nature of damage to internal or external components, etc.) used by large shippers of transformers for determining whether these units should be processed as salvage or reconditioned. If one were to use these criteria, the petitioner states, it would be immediately obvious to the owner and certainly to the rebuilding/decommissioning facility, that the transformer is unsuitable for repair and should be scrapped. In short, the petitioner believes that these practices are used to postpone the generator being subject to subpart D, H and K under 40 CFR part 761.

The petitioner has also obtained information from a confidential source

that the number of transformers being sent to rebuilding/decommissioning facilities is increasing while at the same time, the percentage of transformers repaired is decreasing. To substantiate this claim the petitioner requested that EPA conduct an investigation to determine statistics that provide the percentage of transformers that are repaired versus decommissioned.

## II. EPA's Decision

EPA has concluded that the petitioner has not presented information which would warrant initiating rulemaking to amend the definition of generator at 40 CFR 761.3; therefore, EPA is denying the petition. Specifically, EPA is denying the petition because amending the definition of generator as proposed by the petitioner is unnecessary because the existing regulations adequately protect against unreasonable risk. Moreover, the petitioners proposed changes would not result in greater protection to health and the environment or even address the petitioner's concern that shippers are circumventing the disposal requirements by sending unmanifested waste to rebuilding/decommissioning facilities.

The current regulations have a mechanism for handling situations where unmanifested waste is received by a commercial storer or permitted disposer (40 CFR 761.211 - Unmanifested Waste Reports). EPA's position on this matter is further expressed on page 52733 in the preamble of the December 21, 1989 Federal Register (54 FR 52716) where EPA states:

...the preparation of an Unmanifested Waste Report should not be a frequent event for these facilities, since the proposed regulation would otherwise prohibit the acceptance by any transporter, off-site commercial storer, or disposer, of any unmanifested PCB waste... [emphasis added]

If any rebuilding/decommissioning facility receives waste generated by others, that facility becomes a commercial storer of PCB waste as defined by §761.3, and as such is subject to the provisions of 40 CFR part 761 applicable to commercial storers which would require notification to, and possible approval by, EPA. If this waste is received at the facility without a manifest, the owner or operator of the facility shall submit an Unmanifested Waste Report. Owners or Operators of commercial storage or PCB disposal facilities are required to prepare an Unmanifested Waste Report whenever they receive from an offsite source any PCB waste without the required

manifest. The report must be sent, within 15 days after receiving the waste, to both the Regional Administrator in the region where the waste was generated and the region where the receiving facility is located. The report includes information on the disposition of the waste, such as, whether it was stored for disposal, disposed of or returned to the generator. Properly submitted Unmanifested Waste Reports could be used to initiate an investigation whether shippers were attempting to circumvent the disposal regulations as described by the petitioner.

It should be noted that the rebuilding/decommissioning facility may also fall within the definition of "generator of PCB waste." The preamble to the Notification and Manifesting rule (54 FR 52716, December 21, 1989, at page 52718) states, "If either the servicing facility or the owner decides that the equipment cannot be serviced, the equipment becomes PCB waste and the servicer or processor becomes the generator of the PCB waste." Therefore, if the rebuilding/decommissioning facility decides that the transformer cannot be repaired and is in effect PCB waste, then they become the generator for the purpose of disposal and subject to the notification and manifesting requirements of subpart K.

The petitioner also maintained that this activity would present a risk of injury to health and the environment. EPA believes that amending the definition of generator at §761.3 is unnecessary and would not result in greater protection to health or the environment, because the existing regulations provide equivalent and adequate protection against unreasonable risk. Broadening the definition of generator would not provide additional protection to health or the environment or enhance compliance/enforcement of the requirements of subparts D, H, and K under 40 CFR part 761. In addition, risks are further mitigated by the shippers requirement to be in compliance with the Department of Transportation (DOT) regulations at 49 CFR 172.102 for the transport of PCBs.

In summary, section 21 of TSCA authorizes any person to petition the Administrator to "initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8, or an order under section 5(e) or 6(b)(2) of TSCA. Accordingly, to the extent the petitioner seeks review of the compliance and enforcement of the regulations, that challenge is not appropriate in the form of a TSCA section 21 petition. The situation

described by the petitioner in the petition would be more appropriately addressed by contacting enforcement officials in the regional offices or EPA's Office of Enforcement and Compliance Assurance (OECA).

## III. Public Record

### A. Supporting Documentation

EPA has established a record for its response to this petition under section 21 of TSCA (docket number OPPTS-211038). The record contains the basic information considered by EPA in reaching this decision.

### B. References

The following references are included in the record for this action:

- (1) Petition submitted to USEPA by Mark E. Fogel, Attorney for Environmental Protection Services, Inc. (May 31, 1994) and attachments.
- (2) Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities; Final Rule (54 FR 52716).
- (3) Letter from Joseph J. Kelly, S.D. Myers (June 21, 1994) to USEPA.

## IV. Conclusion

For the reasons detailed above, EPA is denying the TSCA section 21 petition by Environmental Protection Services, Inc. to amend the definition of "generator" in 40 CFR 761.3.

Authority: 15 U.S.C. 2620.

Dated: August 19, 1994.

Lynn R. Goldman,  
Assistant Administrator for Prevention,  
Pesticides and Toxic Substances.  
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## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (46 U.S.C. 817(a)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

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Two North Riverside Plaza, Suite  
600, Chicago, Illinois 60606.

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